91-1351

Supreme Court, U.S.
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NO. 91-____

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1991

STATE OF ARIZONA,

Petitioner,

-vs-

DAVID LESLEY TAYLOR,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE ARIZONA COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does the search incident to arrest exception of the Fourth Amendment apply if a police officer searches a defendant pursuant to a lawful arrest, when the police officer does not intend to make a "full-custody" arrest of the defendant but merely to issue a citation and release the defendant?

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OPINIONS BELOW

Two police officers saw respondent drinking a beer in a Tucson city park, a violation of a municipal ordinance. The officers approached respondent, intending to write a citation for the offense and thereafter release him. One of the officers searched the respondent and found "hashish" folded in a piece of paper in his wallet. (Appendix A at A-2.) The trial court denied respondent's motion to suppress, finding that the search was a lawful search incident to an arrest.

The Arizona Court of Appeals determined that the issue raised by these facts was "whether officers are free to search anyone they might arrest but have no intention of arresting under a search incident to arrest theory." It resolved the issue by holding that this Court's

cases of United States v. Robinson[1] and Gustafson v. Florida[2] controlled the issue. It held that a search incident to arrest extended only to a "custodial arrest." It found custodial arrest to be defined in Robinson as "the taking of a suspect into custody and transporting him to the police station." It found that the arresting officers in the instant case intended to cite and release respondent, therefore the rationale for a full custodial arrest as announced in Robinson was lacking. It stated that, to hold otherwise would invite "pretextual arrest and incident searches," an undesirable result under the Fourth Amendment. It therefore held that the trial court should have suppressed the evidence. (Appendix A at A-3-4.)

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1. 414 U.S. 218 (1973).

2. 414 U.S. 260 (1973).

One member of the court of appeals dissented. The dissenting judge noted that respondent was arrested for violating a section of the Tucson City Code that made possession of beer in a public park without a permit a misdemeanor offense. Under A.R.S. § 13-3883, the officers had authority to arrest the defendant. A.R.S. § 13-3903 allows a defendant who is arrested for a misdemeanor or petty offense to be released in lieu of taking such person to the police station by issuing a citation. A.R.S. § 13-3903(F) states that the cite and release provisions of § 13-3903 are not to be construed to affect a police officer's authority to conduct an otherwise lawful search incident to an arrest even though the person would be released instead of being taken to the police station. The dissent noted that it was without question that the defendant was under arrest. The

dissent disagreed that Robinson and Gustafson required anything more for a "custodial arrest." (Appendix A at A-5-7.) The state's timely petition for review was ultimately denied by the Arizona Supreme Court on November 19, 1991. (Appendix B.)

STATEMENT OF JURISDICTION

Petition for writ of certiorari to the Arizona Court of Appeals.

The Arizona Attorney General, on behalf of the State of Arizona, prays that a writ of certiorari issue to review the judgment of the Arizona Court of Appeals entered on November 20, 1990. (Appendix A.) The state's Petition for Review to the Arizona Supreme Court was ultimately denied on November 19, 1991. (Appendix B.) This petition for writ of certiorari is timely filed within 90 days of the Arizona Supreme Court's denial of the petition for review. Petitioner invokes this Court's jurisdiction under United States Constitution Article III, Section 2, 28 U.S.C. § 1257(a), and Supreme Court Rule 10.1(b) and (c).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The pertinent part of the Fourth Amendment reads as follows:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . .

The pertinent part of the Fourteenth Amendment reads as follows:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; . . .

Arizona Revised Statutes Annotated

§ 13-3883

§ 13-3903

(Attached as Appendix C.)

STATEMENT OF THE CASE

On February 12, 1989, at about 5:40 p.m., Officers Robert Jiminez and Chris Morand of the Tucson Police Department were driving in their patrol car past a park on the west side of Tucson. They both saw respondent standing in the park with his dog, talking to several youths and drinking from a can of Budweiser beer. When respondent saw the officers, he crossed his arms in front of him, attempting to hide the beer can. The officers stopped their patrol car and approached respondent. Officer Jiminez asked respondent to put down his beer can. Respondent complied. While Officer Jiminez began to write out a citation for having and consuming beer in a public park without a permit, a misdemeanor violation of the Tucson City Code, respondent's dog accidentally knocked

over the can of beer. Liquid and suds came out of the can.

Officer Jiminez informed respondent that the citation meant that respondent was under arrest, but would be released immediately upon his signing of the notice to appear. Meanwhile, Officer Morand decided to search respondent. Morand knew respondent from a previous arrest for weapons misconduct and possession of narcotics. In respondent's wallet, Officer Morand found a uniquely folded piece of paper that contained a brown substance Morand believed to be hashish. The officers immediately arrested respondent for possession of a narcotic drug. Respondent admitted to the officers that it was "hash," and a laboratory analysis confirmed that the substance was hashish, a concentrated form of marijuana in a usable amount.

Respondent was indicted for unlawful possession of a narcotic drug, a class 4

felony, in violation of A.R.S. §§ 13-3408(A)(1), (B)(1), (C) and (E). Respondent moved to suppress the hashish, arguing that the search violated both his Arizona and federal constitutional rights. The trial court found that respondent was under arrest and that the search incident to that arrest did not violate respondent's rights.

Respondent waived his jury trial and the case was tried to the court. The trial court found respondent guilty, and placed respondent on probation for 4 years and imposed a fine of $2,740.

On appeal, the Arizona Court of Appeals addressed the issue to be resolved:

> The issue raised by these facts is whether officers are free to search anyone they might arrest but have no intention of arresting under a search incident to arrest theory.

(Appendix A at A-2.) The court reasoned that, under United States v. Robinson and

Gustafson v. Florida, this Court had defined custodial arrest as "the taking of a suspect into custody and transporting him to the police station." (Appendix A at A-3.) The court held that, if the officers are going to release the person after the issuance of a citation, as was respondent in this case, there is "no justification to search." (Appendix A at A-3-4.) The basis for the court's holding was that, to allow searches when the police intend to cite and release, would "invite pretextual arrests and incident searches, with a custodial arrest to follow if something was found and release to follow otherwise."[3] (Appendix A at A-4.) The court found that the search was "unreasonable" and reversed the conviction. (Appendix A at A-4.)

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3. For support of its holding regarding pretextual arrests, the Arizona Court of Appeals cited to 2 W. LaFave, Search & Seizure § 5.2(h) (2d ed. 1987).

One member of the Arizona appellate court dissented from the majority holding.[4] The dissenting judge noted that, under Arizona law, respondent had violated a section of the Tucson City Code. Under A.R.S. § 13-3883(A)(4), a police officer may arrest a suspect without a warrant when the officer has probable cause to believe that the person has committed a misdemeanor or petty offense in the officer's presence. A.R.S. § 13-3903 allows the arresting officer, in a misdemeanor arrest situation, to "release the arrested person from custody in lieu of taking such person to the police station" by having the arrestee sign a notice to appear and complaint. A.R.S. § 13-3903(A). A.R.S. § 13-3903(F) provides that the sections are not to be construed to affect a police officer's authority to conduct a lawful

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4. The Arizona Court of Appeals is divided into various three-judge panels.

search incident to the arrest even though the arrested person is to be released before being taken to the police station or a magistrate. The dissent disagreed with the majority's interpretation of United States v. Robinson and Gustafson v. Florida. The dissent believed that a full search incident to the arrest and release situation was permissible under the Fourth Amendment. (Appendix A at A-6-7.)

On December 18, 1990, the State of Arizona filed a timely petition for review to the Arizona Supreme Court. The Arizona Supreme Court denied the petition for review on November 19, 1991.[5] (Appendix B.)

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5. The Arizona Supreme Court originally granted the state's petition for review and heard oral argument on the case. After oral argument, the Arizona Supreme Court vacated its previous order granting the petition for review and denied the petition without comment.

REASON FOR GRANTING THE WRIT

In United States v. Robinson, this Court specifically reserved ruling on the question whether the search incident to arrest doctrine applied in situations where the arresting officer intended to issue a citation and release the arrestee. Since Robinson, the various jurisdictions and legal commentators have disagreed on the applicability of the search incident to arrest doctrine to a cite and release situation. The State of Arizona requests that this Court accept the petition for certiorari, reverse the Arizona Court of Appeals, and hold that the search incident to arrest doctrine does extend to a cite and release situation, and is a "reasonable" search under the Fourth Amendment.

. . . .

. . . .

A. A search incident to arrest is a "reasonable" search under the Fourth Amendment and should apply to arrest and release situations.

In United States v. Robinson, this Court held that a custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment. 414 U.S. at 235. The Court reasoned that the intrusion being lawful, the search incident to the arrest required no additional justification. Id.

> It is the fact of the lawful arrest which establishes the authority to search, and we hold that in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a "reasonable" search under that Amendment.

Id. This Court noted that it was the "fact of custodial arrest" that gave rise to the authority to search incident to that arrest. In footnote 6 of the opinion, the Court specifically declined to reach the question whether the

analysis would apply if the officer would have simply issued a notice of violation and allowed the offender to proceed. 414 U.S. at 236 n.6. In Gustafson v. Florida, issued the same day as Robinson, this Court affirmed the search incident to arrest doctrine to minor traffic violations where the arrestee was physically taken into custody. 414 U.S. at 265-66.

In his concurring opinion for both Robinson and Gustafson, Justice Powell stated:

> If the arrest is lawful, the privacy interest guarded by the Fourth Amendment is subordinated to a legitimate and overriding governmental concern. . . . The search incident to arrest is reasonable under the Fourth Amendment because the privacy interest protected by that constitutional guarantee is legitimately abated by the fact of arrest.

414 U.S. at 237-38. If the lawful arrest abates the privacy interest protected by the Fourth Amendment, Arizona believes a

search incident to the arrest is permissible whether or not the arrestee will be cited and released, or transported to the police station.

B. Jurisdictions are divided on whether a search incident to arrest applies to an arrest and release situation.

After Robinson and Gustafson, various state courts have been asked to address whether or not the search incident to arrest doctrine applies to an arrest and release situation. The jurisdictions have divided almost equally on the issue. In State v. Brantigan, 798 P.2d 1176 (Ct. App. Wash. 1990), the defendant was initially stopped for littering. In the course of running a records check on the defendant, the officer noticed drug paraphernalia in the defendant's car. Upon seeing the drug paraphernalia items, the officer told the defendant he was under arrest for possession of narcotics paraphernalia. In the course of the search, the officer discovered two

packets of cocaine in the defendant's pant's pocket. At the suppression hearing, the officer candidly admitted that he would have cited and released the defendant on the drug paraphernalia charge if he had not found the cocaine in the course of the search. The defendant contended that, to be a "reasonable" search incident to arrest, the officers must intend to execute a "custodial" arrest. 798 P.2d at 1177. The Washington Court of Appeals rejected the defendant's contention, finding that if there is probable cause to execute a misdemeanor arrest, the Fourth Amendment does not prohibit a search incident to that arrest. 798 P.2d at 1178, citing Rawlings v. Kentucky, 448 U.S. 98 (1980).

In State v. Boulia, the officer noticed two individuals appearing to be engaged in smoking marijuana. 522 So. 2d 528, 529 (Fla. App. 2d Dist. 1988). The officer approached the two individuals

BEST AVAILABLE COPY

and informed the defendant that the officer was going to cite her for possession of marijuana. The officer then searched the defendant's purse, where he found a small vial of cocaine. Whereupon, the officer made a custodial arrest for possession of cocaine. The trial court suppressed the cocaine as the fruit of an impermissible search under the Fourth Amendment. 522 So. 2d at 529. The Florida appellate court rejected the trial court's reasoning, holding that the fact that the officer "announced his intention to issue Boulia a notice to appear for the marijuana possession charge rather then effecting a full-custody arrest is of no consequence." 522 So. 2d at 530. Accord, State v. Gonzales, 562 So. 2d 705 (Fla. App. 3d Dist. 1990) (Nesbitt, J., specially concurring).

In People v. Palmer, the defendant was stopped for driving without license

plates. 22 Ill. App. 3d 866, 318 N.E.2d 206 (Ct. App. 1974). The officer approached the defendant and asked for a driver's license. When the defendant could not produce a driver's license, the officer searched him. In the course of the search, the officer discovered an illegal weapon. The defendant moved to suppress the weapon as the fruit of an illegal search incident to arrest. The Illinois intermediary appellate court ordered the evidence suppressed, finding that Robinson and Gustafson were not controlling because this was not a valid custodial arrest. Id. The State of Illinois appealed, and a divided Illinois Supreme Court reversed. People v. Palmer, 62 Ill. 2d 261, 342 N.E.2d 353, cert. denied, 429 U.S. 871 (1976). The majority of the Illinois Supreme Court held that a custodial arrest was not required. 342 N.E.2d at 354. Justice Goldenhersh dissented, claiming that

under Robinson and Gustafson a "custodial arrest" was required in order to execute a search incident to arrest. 342 N.E.2d at 355-56. But cf. State v. King, 142 Wis. 2d 207, 418 N.W.2d 11 (Ct. App. 1987) (no distinction between "custodial" and "noncustodial" arrests).

The Arizona Court of Appeals reversed the present case on the theory that, under Robinson and Gustafson, a search incident to arrest under the Fourth Amendment is permissible only when the officers make a "custodial arrest." (Appendix A at A-4.) Other courts asked to address the issue specifically left open in Robinson have reached results consistent with the Arizona Court of Appeals. Thomas v. State, 453 So. 2d 1075 (Ala. Cr. App. 1984) (noncustodial arrest does not give rise to a search incident to arrest); State v. Clyne, 189 Colo. 412, 541 P.2d 71 (1975) (search incident to arrest does not apply to

non-custodial arrests); but cf. People v. Meredith, 763 P.2d 562 (Colo. 1988) (limited holding in Clyne to detention for issuance of a summons); State v. Breax, 329 So. 2d 696 (La. 1976) (Robinson and Gustafson limited to a full-custody arrest); 2 W. LaFave and J. Israel, Criminal Procedure § 12.5(b) at 152-53. The State of Arizona requests that this Court grant the petition for certiorari to resolve whether the search incident to arrest exception to the Fourth Amendment is applicable to cite and release arrests.

C. The universal safety and protection of law enforcement personnel requires that this Court hold that a search incident to arrest applies to arrest and release situations.

In rejecting the contention that Terry v. Ohio[6] required that an officer have probable cause to search incident to a

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6. 392 U.S. 1 (1968).

custodial arrest, this Court noted in Robinson that there was no support for the assumption that persons arrested for minor offenses were less likely to possess dangerous weapons than those arrested for major crimes. 414 U.S. at 234. The Court noted that the danger to the police officer flows from the fact of the arrest, and its attendant proximity, stress, and uncertainty, and not from the grounds for arrest. 414 U.S. at 234 n.5. As Justice Powell noted in his concurring opinion, the arrest itself invades the privacy interest guarded by the Fourth Amendment. 414 U.S. at 237. If the arrest is lawful, then no reason exists to frustrate law enforcement by requiring some independent justification for a search incident to that lawful arrest. Id.

In Arizona, before a person may be released pursuant to a cite and release procedure, the arrestee must produce

proper identification, the officers must run a warrant check and assess the arrestee's demeanor and behavior, and the arrestee must sign the citation agreeing to appear at the court proceedings. The investigation may take a few minutes or few hours, and may occur in a myriad of circumstances. It is not until after the officer completes the investigation and evaluates all of the dynamic circumstances that the officer can and does make the final decision whether or not to release the arrestee. Therefore, to require, as does the Arizona Court of Appeals' decision and those other jurisdictions that subscribe to its reasoning, that the officer must determine at the inception of the arrest for a petty or misdemeanor offense whether the arrestee will be field released or transported to the station, turns law enforcement decision making on its head. It asks the officer to make a

discretionary decision whether to arrest and transport or arrest and release before the facts and circumstances on which the decision is based are known. This requirement risks the officer's physical safety and the destruction of evidence while a full investigation is undertaken. By requiring that the officers may not engage in a full search of the defendant unless the defendant is to be transported to the station, the Arizona Court of Appeals requires law enforcement officers to conduct a more intrusive procedure in order to justify a less intrusive one. Cf. California v. Acevedo, ___ U.S. ___, 111 S. Ct. 1982, 1989 (1991) (Court sees no "benefit of a rule that requires law enforcement officers to conduct a more intrusive search in order to justify a less intrusive one").

The only basis proffered by the state courts in rejecting the search incident

to arrest exception to cite and release arrests is the notion that it would encourage pretextual searches. (Appendix A at A-4.) However, the very concept of pretextual searches has been repudiated by this Court. United States v. Scott, 436 U.S. 128 (1978).

> [T]he fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action so long as the circumstances, viewed objectively, justify that action.

436 U.S. at 138.

The issue has never been disputed that the officers in the instant case had probable cause to arrest respondent for drinking alcohol in a public park without a permit. At the suppression hearing, the officer testified that, based on departmental police instructions that he could search incident to a misdemeanor arrest, he engaged in such a search.

There is nothing in the record that would evidence that this was a "pretextual" search. Moreover, as this Court noted in Scott, the subjective basis upon which an officer acts is irrelevant so long as the objective factors involved clearly justify the officer's action. 436 U.S. at 138.

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. . . .

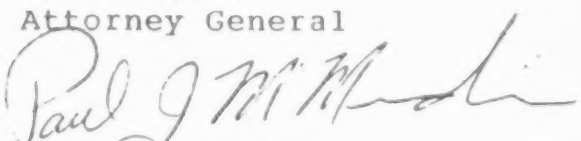
CONCLUSION

The State of Arizona prays that this Court will accept the petition for certiorari and resolve the issue of the extent of the search incident to arrest exception to the Fourth Amendment and hold that a search incident to arrest is "reasonable" in cite and release situations. The state believes that such a holding is consistent with the principles enunciated in United States v. Robinson and Gustafson v. Florida, and that the Arizona Court of Appeals and the other states that have so limited the exception under the Fourth Amendment are without justification.

DATED this 14th day of February, 1992.

Respectfully submitted,

GRANT WOODS
Attorney General



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THREE COPIES of this Brief were deposited for mailing this 14th day of February, 1992, to:

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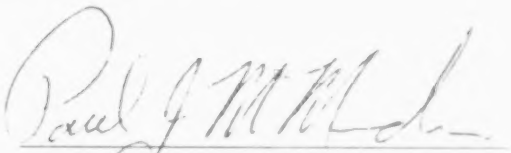

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APPENDICES

APPENDIX A

[Filed November 20, 1990]

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee,	)	
v.	)	2 CA-CR 89-0648
DAVID L. TAYLOR, Appellant.	)	DEPARTMENT A
	)	O P I N I O N

APPEAL FROM THE SUPERIOR COURT
OF PIMA COUNTY

Cause No. CR-26862

Honorable William N. Sherrill, Judge

REVERSED

Robert K. Corbin, The Attorney General
by Jessica Gifford Funkhouser and
Eric A. Bryant Phoenix

Attorneys for Appellee

Susan A. Kettlewell, Pima County Public Defender
by Nancy F. Jones Tucson

Attorneys for Appellant

L I V E R M O R E, Presiding Judge.

On February 12, 1989, two police officers saw defendant drinking a beer in a Tucson city park, a violation of a municipal ordinance. They approached him intending to write a citation for that offense. One of the officers searched defendant and found hashish folded in a paper in his billfold. Had that hashish not been found, both officers agree, defendant would have been free to leave.[1/] The issue raised by these facts is whether officers are free to search anyone they might arrest but have no intention of arresting under a search incident to arrest theory. We believe they may not. Accordingly, we reverse defendant's conviction for possession of hashish.

1/ Both officers also agreed that they had no reason to believe defendant armed or dangerous. We need not address, therefore, the circumstances under which a protective search for weapons might be undertaken. Such a search, of course, could not extend to examining the compartments of a billfold.

In United States v. Robinson, 414 U.S. 218, 94 S.Ct. 467, 38 L.Ed.2d 427 (1973), and Gustafson v. Florida, 414 U.S. 260, 94 S.Ct. 488, 38 L.Ed.2d 456 (1973), the court upheld a full search of the person being arrested incident to that arrest. When custodial arrest, defined in Robinson as "the taking of a suspect into custody and transporting him to the police station," 414 U.S. at 235, 94 S.Ct. at 476, 38 L.Ed.2d at 440, is in issue, that search for weapons and destructible evidence is authorized, even without reason to believe that either would be present, in part because the arrest itself would create a motivation to use a weapon or destroy evidence. That rationale cannot apply when a person is not being taken into custody to be booked for an offense. If a person is to be free to leave, as defendant was to be in this case, there is no motivation to destroy evidence. In turn, there is no

justification to search for it. We are cited no authority for the proposition that police are free to search anyone they choose to cite for a misdemeanor offense or that they could arrest although they do not intend to. It would be obviously destructive of the privacy of many if police could justify searches on the basis of charges they never intended to pursue in the hope that the search would turn up something they could pursue. That would invite pretextual arrests and incident searches, with a custodial arrest to follow if something was found and release to follow otherwise. See generally 2 W. LaFave, Search & Seizure § 5.2(h), (2d ed. 1987). But a search must be justified at its inception, not by what it turns up. There being no probable cause to search, no reason to believe that defendant was armed or dangerous, and no compelling law enforcement interest, only curiosity,

being served, the search in this case was unreasonable. The hashish thereby discovered must be suppressed.

Reversed.

/S/
JOSEPH M. LIVERMORE,
Presiding Judge

CONCURRING:

/S/
MICHAEL A. LACAGNINA, Judge

H A T H A W A Y, J., Dissenting.

Appellant was arrested under the section of the Tucson Code which makes an unpermitted possession of beer in a public park a misdemeanor. Tucson Code §§ 21-7, -8 (1987). Also, A.R.S. § 4-244(20) prohibits beer consumption from a broken package in a public place.

A.R.S. § 13-3883(4) permits a police officer, without a warrant, to arrest someone whom the officer has probable cause to believe has committed a misdemeanor or petty offense. The

statute also permits immediate release under § 13-3903, which provides that when a person is arrested for a misdemeanor or petty offense, "the arresting officer may release the arrested person from custody in lieu of taking such person to the police station by use of the procedure prescribed in this section, . . ." i.e., the signing of the notice to appear and complaint. A.R.S. § 13-3903(A). A.R.S. § 13-3903(F) states that "[n]othing in this section shall be construed to affect a police officer's authority to conduct an otherwise lawful search incident to his arrest even though such arrested person is released before being taken to the police station or before a magistrate pursuant to this section."

A.R.S. § 13-3881(A) provides that an arrest is "actual restraint of the person to be arrested," or "submission to the custody" of the officer. It is clear that under the facts of this case

appellant was arrested and in custody when he was searched. No person in appellant's circumstance would have believed that he was free to leave at that time. State v. Ault, 150 Ariz. 459, 464, 724 P.2d 545, 550 (1986). Accordingly, a full search incident to a custodial arrest was reasonable under the Fourth Amendment. United States v. Robinson, 414 U.S. 218, 94 S.Ct. 467, 38 L.Ed.2d 427 (1973); Gustafson v. Florida, 414 U.S. 260, 94 S.Ct. 488, 38 L.Ed.2d 456 (1973). Also see, State v. Magness, 115 Ariz. 317, 321, 565 P.2d 194, 198 (App. 1977).

The sitution [sic] is similar to State v. Susko, 114 Ariz. 547, 562 P.2d 720 (1977), where the defendant was stopped for not having a properly licensed motorcycle. The incidental search turned up a stolen wallet with credit card. The search was upheld as permissible incident

to arrest. In my opinion, the conviction should be affirmed.

/S/
JAMES D. HATHAWAY, Judge

APPENDIX B

[Filed November 19, 1991]

SUPREME COURT OF ARIZONA

STATE OF ARIZONA,	)	Supreme Court
	)	No. CR-91-0012-PR
Appellee,	)	
	)	Court of Appeals
vs.	)	No. 2 CA-CR 89-0648
	)	
DAVID L. TAYLOR,	)	Pima County
	)	No. CR-26862
Appellant.	)	
	)	O R D E R
	)	

ORDERED: Vacating order previously entered granting petition for review as having been improvidently granted.

FURTHER ORDERED: Petition for Review is DENIED.

DATED this 19th day of November, 1991.

/S/
FRANK X. GORDON, JR.
Chief Justice

TO:
Hon. Grant Woods, Attorney General
ATTN: Paul J. McMurdie, Esq. and
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APPENDIX C

Arizona Revised Statutes Annotated

§ 13-3883. Arrest by officer without warrant

A. A peace officer may, without a warrant, arrest a person if he has probable cause to believe:

1. A felony has been committed and probable cause to believe the person to be arrested has committed the felony.

2. A misdemeanor has been committed in his presence and probable cause to believe the person to be arrested has committed the offense.

3. The person to be arrested has been involved in a traffic accident and violated any criminal section of title 28, and that such violation occurred prior to or immediately following such traffic accident.

4. A misdemeanor or a petty offense has been committed and probable cause to believe the person to be arrested has committed the offense. A person arrested

under this paragraph is eligible for release under § 13-3903.

B. A peace officer may stop and detain a person as is reasonably necessary to investigate an actual or suspected violation of any traffic law committed in the officer's presence and may serve a copy of the traffic complaint for any alleged civil or criminal traffic violation. A peace officer who serves a copy of the traffic complaint shall do so within a reasonable time of the alleged criminal or civil traffic violation.

§ 13-3903. Notice to appear and complaint

A. In any case in which a person is arrested for an offense that is a misdemeanor or a petty offense, the arresting officer may release the arrested person from custody in lieu of taking such person to the police station

by use of the procedure prescribed in this section.

B. At any time after taking a person arrested for an offense that is a misdemeanor or a petty offense to the police station, the arresting officer may, instead of taking such person to a magistrate, release such person from further custody by use of the procedure prescribed in this section.

C. In any case in which a person is arrested for an offense that is a misdemeanor or a petty offense, the arresting officer may prepare in quadruplicate a written notice to appear and complaint, containing the name and address of such person, the offense charged, and the time and place where and when such person shall appear in court, provided:

1. The time specified in the notice to appear is at least five days after arrest.

2. The place specified in the notice shall be the court specified in § 13-3898.

3. The arrested person, in order to secure release as provided in this section, shall give his written promise so to appear in court by signing at least one copy of the written notice and complaint prepared by the arresting officer. The officer shall deliver a copy of the notice and complaint to the person promising to appear. Thereupon, the officer shall forthwith release the person arrested from custody.

4. The officer shall, as soon as practical, deliver the original notice and complaint to the magistrate specified therein. Thereupon, the magistrate shall promptly file the notice and complaint and enter it into the docket of the court.

D. The Arizona traffic ticket and complaint may be utilized not only for the purposes provided in the Arizona

supreme court rule, but to satisfy the requirements of this section.

E. When a person has given his written promise to appear in court upon a designated date pursuant to this section, and thereafter fails to appear, personally or by counsel, on or before that date, the magistrate shall file a complaint, in writing, under oath, setting forth the offense of wilfully violating a written promise to appear in court in accordance with § 13-3904, and shall issue a warrant of arrest thereon. Upon such person's appearance in court for arraignment on the charge of violating § 13-3904, such magistrate shall also arraign such person on the charge stated in the notice to appear and complaint for which such person had previously promised to appear.

F. Nothing in this section shall be construed to affect a peace officer's

authority to conduct an otherwise lawful search incident to his arrest even though such arrested person is released before being taken to the police station or before a magistrate pursuant to this section.